

demonstrated above, because the proposed LPFM stations must be made available to existing broadcasters, who are likely to be in a more advantageous position to acquire them than parties who do not operate existing full-power stations, the proposed LPFM service would not provide a means of increasing ownership diversity or promoting new entry into broadcasting.

B. The FCC's Proposal to Treat LP1000 Stations as a Primary Service is Inconsistent With Section 307(b) of the Act and the FM Allotment Priorities.

The FCC's proposal to treat LP1000 stations as a primary service has the potential to preclude FM allotments in a manner which is inconsistent with Section 307(b) of the Communications Act and the FM allotment priorities.<sup>21</sup> For example, if a party files a rulemaking petition seeking to bring a first local service to a specific community, and that proposal conflicts with a previously filed LP1000 application (or existing LP1000 station), the petitioner's proposal would be precluded by the LP1000 application regardless of whether the proposed full-power FM station would serve a substantially greater area and population, including white or gray areas. Therefore, the Commission's proposal to treat LP1000 stations as a primary service should not be adopted because it would preclude certain FM allotments in a manner that would be inconsistent with Section 307(b) of the Act and the FM allotment priorities.

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<sup>21</sup> See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). The criteria for determining the comparative preferability of a proposed FM allotment are (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. *Id.* at 91.

#### IV. Technical Matters.

A. The FCC's Proposal to Establish an LPFM Service is Inconsistent With Commission Proposals in Its *Technical Streamlining* Rulemaking Proceeding.

In its *Technical Streamlining* rulemaking proceeding,<sup>22</sup> the FCC recognized that the FM band is extremely congested. The Commission's proposals in this proceeding are inconsistent with the efforts the FCC has taken in its *Technical Streamlining* proceeding to help alleviate that congestion and provide full-power FM stations with greater flexibility in locating their transmitter sites in an effort to enhance their existing service. For example, in its *Technical Streamlining NPRM*, the Commission stated that increasing congestion in both the reserved and non-reserved portions of the FM band significantly restrict operating stations from relocating their transmitters to better transmitter sites. *Technical Streamlining NPRM* at ¶3. The Commission also stated that "[c]ongestion in the reserved band has increased during the past twenty years, and demand for NCE FM licenses remains high." *Id.* at ¶60. The Commission's proposal to establish a new LPFM service is inconsistent with the above statements in the *Technical Streamlining NPRM* in which the FCC expressly acknowledged the congested nature of the FM band.

Moreover, certain proposals in the *Technical Streamlining NPRM* are designed to help FM stations enhance their existing service despite the congestion. As one example, the FCC has proposed to allow negotiated interference agreements between stations. The Commission believes that the FM band is so congested that certain service improvements could not be implemented

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<sup>22</sup> 1998 Biennial Regulatory Review -- Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules, Notice of Proposed Rule Making in MM Docket No. 98-93, 13 FCC Rcd 14849 (1998) ("*Technical Streamlining NPRM*"), *First Report and Order*, FCC 99-55 (released March 30, 1999) ("*Technical Streamlining First R&O*").

without the proposed new rule.<sup>23</sup> *Technical Streamlining NPRM* at ¶20. In addition, the FCC proposed the use of a point-to-point (“PTP”) prediction model for the purpose of providing a more accurate prediction of interfering contours due to the congested nature of the existing FM service. *Id.* at ¶31.

A further example of the Commission’s recognition of the congested nature of the FM band is reflected in its proposal to create an additional intermediate class of station -- Class C0. The proposed Class C0 stations would have maximum and minimum antenna heights of 450 meters and 300 meters above average terrain, respectively. *Id.* at ¶43. The Commission proposed this new intermediate class of FM station because approximately 60% of Class C stations are not operating with maximum facilities. *See Id.* at ¶¶42-44. The Commission’s proposal to create a new intermediate Class C0 station is a further illustration of its belief that the FM band is overcrowded.

The Commission also recognized in its *Technical Streamlining* proceeding that there are stations which have been reluctant to pursue coordinated facility changes because of the possibility that competing, mutually-exclusive applications may be filed which would conflict with their joint proposals. *Id.* at ¶13. The FCC concluded that precluding the filing of competing allotment and minor change proposals in this limited context would serve the public interest because the

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<sup>23</sup> In proposing to permit negotiated interference agreements, the Commission stated as follows:

Virtually all major and mid-sized markets, where we anticipate the greatest level of interest in negotiated interference agreements, receive service from five or more radio stations, our traditional measure of a well-served area. [footnote omitted] Opportunities for new full service or substantial facility improvements in these markets are extremely limited. *Congestion in the FM band* provides a major technical impediment to the further “urban clustering” of stations.

*Technical Streamlining NPRM* at ¶18 (emphasis added).

coordinated facility changes would result in enhanced service to the public. *Id.* at ¶13. Accordingly, in its *First Report and Order* in the *Technical Streamlining* proceeding, the Commission adopted a new rule to permit the filing of up to four related, simultaneously-filed minor change applications. *Technical Streamlining First R&O* at ¶14.

As demonstrated above, the FCC's proposal to adopt a new LPFM service is inconsistent with the Commission's proposals in its *Technical Streamlining* proceeding which are designed to relieve the existing congestion in the FM band and permit full-power stations to expand or enhance their existing service despite that congestion. There can be no dispute that the proposed LPFM service would significantly impair the ability of full-power stations to take advantage of the new rules that may be adopted in the *Technical Streamlining* proceeding. Before authorizing a new LPFM service, the Commission should first determine the impact that the new rules adopted in the *Technical Streamlining* proceeding will have upon the existing congestion in the FM band. Therefore, among its other deficiencies, the FCC's proposal to adopt a new LPFM service is premature.

B. The Proposed LPFM Service Would Cause Substantial Interference to Existing Full-Power FM Stations.

As a result of the minimum distance separation requirements contained in Section 73.207 of the Commission's rules,<sup>24</sup> there are many instances, particularly in relatively rural areas, where there is an open area between the protected service contours of full-power FM stations. These open areas often are not large enough to permit the allotment of an additional full-power FM station. However, many of these gaps are sufficiently large enough to permit the authorization of an LPFM station. The

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<sup>24</sup> See 47 CFR §73.207.

Commission apparently believes that the authorization of an LPFM station in such an open area would not cause interference to nearby full-power FM stations, so long as the LPFM station's predicted interfering contour does not extend into the protected service areas of the full-power stations.

The Commission's proposal to establish an LPFM service fails to recognize that the vast majority of full-power FM stations enjoy good reception well beyond their predicted service contours. Indeed, there are many existing full-power FM stations that have a substantial number of regular listeners who are located outside the station's predicted service contour. If the Commission were to authorize LPFM stations in the open areas between the predicted service contours of full-power stations, many of the existing listeners in those areas no longer would be able to receive the signal of their favorite full-power station because of the interference caused by LPFM stations.

Moreover, if the FCC were to take the position that an LPFM station would not cause interference to full-power FM stations because any "interference" would occur outside the full-power stations' predicted service contours, this would constitute a grave injustice to the listening public. Indeed, the Commission's position would completely ignore the perspective of those listeners who reside outside the predicted service contour of full-power FM stations. The average radio listener is not concerned with predicted service contours or other FCC technical niceties. A listener's only concern is that he or she be able to continue to receive the signal of his/her favorite station. Thus, regardless of whether the interference caused by an LPFM station occurs inside or outside the predicted service contour of a listener's full-power station, from the listener's perspective, the interference is the same because it precludes the listener from being able to continue to receive the signal of their favorite station.

The interference that would be caused by LPFM stations authorized outside a full-power station's predicted service contour is significant for at least three reasons. First, the new LPFM service would not constitute a satisfactory replacement for the full-power service which it would destroy. Due to the restricted power and extremely limited coverage areas of LPFM stations, the LPFM service would not cover nearly as large an area or population as the existing full-power service to which it would cause interference. In most instances, the loss of full-power service would be substantially greater than the limited gain in LPFM service. The loss of full-power service would be especially egregious in those instances where the LPFM station's signal (just as a full-power station's signal) extends well beyond its predicted service contour such that it overlaps with a full-power station's protected contour. In this case, the LPFM station also would prevent those listeners who reside within, but near the outer edge of a full-power station's protected contour, from being able to continue to receive the signal of a full-power radio station.

In addition, there would be many instances where listeners located outside the predicted service contour of a full-power station -- who no longer would be able to receive the signal of a full-power station due to the interference caused by an LPFM station -- also would not be able to receive the signal of the interfering LPFM station. The signals of the two stations would effectively cancel each other out, so that listeners in certain areas would be unable to receive an adequate signal from either the full-power or LPFM station.

Furthermore, because the Commission has proposed not to require a minimum operating schedule for LP100 or microradio stations, it is likely that many interfering LPFM stations would operate only on a periodic basis or for limited periods of time. As a result, the regular listeners of full-power stations who reside either just within the outer edge, or outside, the predicted service

contour of their station would have no way of knowing when they would be able to listen to certain programs on their favorite full-power station.

In all three of the circumstances describe above, the proposed LPFM service would violate one of the Commission's fundamental principles that the listening "public has a legitimate expectation that existing service will continue."<sup>25</sup> In articulating this principle, the Commission has never made any distinction between listeners who reside either inside or outside a station's predicted service contour.<sup>26</sup> Although FCC Chairman William Kennard has repeatedly indicated that he does not intend to implement the proposed LPFM service in a manner that would cause interference to existing full-power stations,<sup>27</sup> there can be no dispute that the proposed LPFM service would deprive many listeners of the ability to continue listening to their favorite full-power radio stations.

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<sup>25</sup> See, e.g., *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 5 FCC Rcd 7094, 7097 (1990). In the above proceeding, the Commission stated:

The public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from reallocating of a channel from one community to another, regardless of whether the service removed constitutes a transmission service, a reception service, or both.

*Id.* at 7097 (emphasis added).

<sup>26</sup> See also 47 CFR §74.1203 (an FM translator or booster station will not be permitted to continue to operate if it causes any actual interference to, *inter alia*, the direct reception of the off-the-air signals of any authorized broadcast station).

<sup>27</sup> See, e.g., *News Release, "Statement of FCC Chairman William E. Kennard at Roundtable Discussion of Low Power FM"* (May 13, 1999) (stating that the FCC must implement its proposed LPFM service "in a way that protects existing broadcast signals and does not impede the conversion to digital radio").

C. The FCC's Proposal to Eliminate Second and Third-Adjacent Channel Separation Requirements is Inconsistent with the Commission's Longstanding Interference Protection Standards.

In its *Report and Order in Grandfathered Short-Spaced FM Stations*,<sup>28</sup> the Commission eliminated the second and third-adjacent channel distance separation requirements for “grandfathered” short-spaced stations (*i.e.*, those stations at locations authorized prior to November 16, 1964, that do not meet the distance separation requirements of subsequently adopted Section 73.207 of the Commission's rules, and have remained continuously short-spaced since that time).<sup>29</sup> However, in the same proceeding, the Commission stated: “We have no intention of relaxing second-adjacent channel and third-adjacent channel spacing requirements as allotment and application criteria.”<sup>30</sup> The Commission explained that interference between second and third-adjacent channel stations generally results in interference in the immediate area of the transmitter of the interfering station, and is actually a substitution of service in that area.<sup>31</sup> Therefore, if the Commission were to establish an LPFM service without maintaining the second and third-adjacent channel interference protections, the proposed LPFM service also would cause substantial interference to existing full-power FM stations *within* their currently protected service contours.

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<sup>28</sup> See *Report and Order* in MM Docket No. 96-120, *Grandfathered Short-Spaced FM Stations*, 12 FCC Rcd 11840 (1997).

<sup>29</sup> *Grandfathered Short-Spaced FM Stations*, 12 FCC Rcd at 11841, n.2.

<sup>30</sup> 12 FCC Rcd at 11848, ¶25, citing *Notice of Proposed Rulemaking*, 11 FCC Rcd 7245, ¶25 (1996). The Commission made the same statement in the concluding paragraph of that section of its *Report and Order*. 12 FCC Rcd at 11849, ¶29.

<sup>31</sup> *Id.* at 11849, ¶27.



As demonstrated in Appendix D to the *NPRM*, if the second and third-adjacent channel interference protections were eliminated, there would be sufficient spectrum available for a substantial number of LPFM stations to be authorized as a result of this proceeding. In fact, it is likely that several LPFM stations could be authorized within the protected service contour of any one full-power FM station. This would result in several pockets of interference to the full-power station around each of the LPFM stations' transmitters. Although the Commission has repeatedly indicated that it does not intend to implement its proposed LPFM service in a manner that would adversely affect existing broadcast stations, the proposal to eliminate the second and third-adjacent channel interference protections would have precisely this effect. Indeed, the elimination of the second and third-adjacent channel interference protections would deprive a substantial number of existing listeners of the ability to continue to receive the signal of many full-power stations, even though the listeners reside well within the protected contours of the full-power stations.

Furthermore, the FCC's proposal to establish an LPFM service without maintaining the second and third-adjacent channel protection requirements is inconsistent with *Grandfathered Short-Spaced FM Stations* and its *Technical Streamlining NPRM*. In its *NPRM* in this proceeding, the Commission noted that it eliminated the third-adjacent channel protection for full-power grandfathered short-spaced stations, including stations which operate with substantially more power than LP1000 stations.<sup>32</sup> The Commission failed to note, however, that in the same proceeding it refused to eliminate the second and third-adjacent channel separation requirements for all other commercial FM stations. The Commission's reference to its elimination of the second and third-

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<sup>32</sup> *NPRM* at ¶43, citing *Grandfathered Short-Spaced FM Stations*, 12 FCC Rcd at 11847-49.

adjacent channel protection standards for grandfathered short-spaced stations -- without stating that it refused to eliminate such requirements for all other commercial FM stations -- is grossly misleading. Indeed, the Commission repeatedly stated in *Grandfathered Short-Spaced FM Stations* that it had “no intention of relaxing second-adjacent channel and third-adjacent channel protection requirements as allotment and application criteria.”<sup>33</sup>

Moreover, in its *Technical Streamlining NPRM*, the FCC proposed to revise the Section 73.215(e) spacing table to provide all commercial FM stations with a minimum of six kilometers of relief from the Section 73.207(a) spacing requirements.<sup>34</sup> The Commission believes that its proposal would “significantly increase licensees’ flexibility to identify sites that provide sufficient spacing to second- and third-adjacent channel stations.” *Technical Streamlining NPRM* at ¶37. Nevertheless, consistent with its earlier determination in *Grandfathered Short-Spaced FM Stations*, the Commission maintained the second and third-adjacent channel protection requirements as allotment and application criteria under Section 73.207. Thus, the *Technical Streamlining NPRM* demonstrates that, as recently as June 1998,<sup>35</sup> the Commission intended to maintain the second and third-adjacent channel distance separation requirements for FM stations.

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<sup>33</sup> *Grandfathered Short-Spaced FM Stations*, 12 FCC Rcd at 11848-49, ¶¶25, 29 (citing *Notice of Proposed Rulemaking*, 11 FCC Rcd 7245, ¶25 (1996)).

<sup>34</sup> In proposing to revise Section 73.215(e) of its rules, the Commission noted that for second and third-adjacent channel stations, the contour protection rule generally limits the amount of relief from the Section 73.207 spacing requirements to no more than three kilometers, and in some cases provides no relief at all. As a result, stations with second and third-adjacent channel spacing problems have, in many instances, even less flexibility to relocate their facilities than they had under the former Section 73.207 waiver policies that permitted spacing waivers up to six kilometers. *See Technical Streamlining NPRM* at ¶¶36-37.

<sup>35</sup> The FCC’s *Technical Streamlining NPRM* was released on June 15, 1998. *See* 13 FCC Rcd 14849 (1998).

In the same proceeding, the FCC also proposed to eliminate the inconsistency between commercial and noncommercial station interference protection standards, which further demonstrates its concern regarding second and third-adjacent channel interference. Specifically, the Commission proposed to modify Sections 73.509 and 74.1204(a) of its rules to specify a 100 dBu interfering contour for second-adjacent channel NCE and FM translator stations. The Commission stated that the 100 dBu contour “better identifies *areas of potentially degraded or lost service within a station’s protected service area caused by another station operating on a second-adjacent channel.*”<sup>36</sup> The FCC’s effort to eliminate the inconsistency between commercial and noncommercial service with respect to second-adjacent channel interference demonstrates the Commission’s recognition that second-adjacent channel interference still exists.

The only explanation the Commission offered in this proceeding for the apparent change in its position regarding second and third-adjacent channel interference is contained in the following statement:

Relaxed interference standards for low power FM stations may be the only way to “find” sufficient spectrum in medium and larger markets to create any new viable service of 100 watts or more.

*NPRM* at ¶44. Even assuming, *arguendo*, that eliminating second and third-adjacent channel protection requirements may be the only way to “find” sufficient spectrum for LPFM stations in certain markets, this does not constitute a sufficient basis for eliminating these interference protection standards. As demonstrated above, the Commission’s proposal to eliminate the second and third-adjacent channel interference protection requirements is blatantly inconsistent with its decision to retain those requirements in two recent rulemaking proceedings. The Commission

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<sup>36</sup> *Technical Streamlining NPRM* at ¶56 (emphasis added).

offered no evidence whatsoever to suggest that the potential for second and third-adjacent channel interference is any less with respect to its proposed LPFM service than it was at the time it adopted *Grandfathered Short-Spaced FM Stations* and its *Technical Streamlining NPRM*. Indeed, rather than present *any* evidence to suggest that its proposed LPFM service would not pose a threat of second and third-adjacent channel interference, the Commission merely requested comment on “the original rationale for 2nd- and 3rd-adjacent channel protection and the extent to which circumstances have changed in such a way to support relaxation of these protections.” *NPRM* at ¶46, n.65. The only circumstance that has changed since the issuance of *Grandfathered Short-Spaced FM Stations* and its *Technical Streamlining NPRM* is that the Commission has not been able to “find” sufficient spectrum for its proposed LPFM service. Therefore, in the event the Commission elects to eliminate the second and third-adjacent channel protection requirements with respect to LPFM stations, the Commission must demonstrate that establishing an LPFM service and eliminating the second and third-adjacent channel protection requirements would not cause interference to full-power FM stations. In light of its recent determinations in *Grandfathered Short-Spaced FM Stations* and its *Technical Streamlining NPRM* to maintain the second and third-adjacent channel interference protection requirements, it is unlikely that the Commission will be able to do so.

The FCC’s proposal to eliminate the second and third-adjacent channel interference protection requirements also is inconsistent with its decision to increase the maximum power level of Class A FM stations to 6 kw.<sup>37</sup> In electing not to establish a 6 kw power increase across the board, the Commission specifically acknowledged that a blanket power increase would result in

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<sup>37</sup> See *Amendment of Part 73 of the Rules to Provide For an Additional FM Station Class (Class C3) and to Increase the Maximum Transmitting Power of Class A FM Stations*, 4 FCC Rcd 6375 (1989) (Second Report and Order).

interference to the service of larger class stations. Accordingly, the Commission concluded that the public interest would not be served by imposing “an involuntary coverage reduction on Class B stations.” The Commission further stated: “While a selective increase in power is consistent with the public interest, it should not be accomplished at the expense of reducing coverage or interfering with other existing facilities.” *Id.* at 6381. As demonstrated above, the proposal to eliminate second and third-adjacent channel interference protection requirements would result in an involuntary coverage reduction on the part of existing full-power stations by causing interference to their existing facilities. The elimination of these separation requirements also would degrade the quality of FM service and cause many of the same problems that have plagued the AM broadcast service. The FCC should, instead, maintain the second and third-adjacent channel separation requirements and protect the integrity and quality of FM service as a whole.

D. Establishing an LPFM Service Would Significantly Hinder the Development of IBOC Digital Transmission Services.

In its *NPRM*, the Commission acknowledged that its “understanding of future IBOC systems is preliminary,” and that it does not have a complete understanding of the negative impact that establishing an LPFM service would have on the transition to digital in-band-on-channel (“IBOC”) technology for FM stations. *NPRM* at ¶49. The Commission further stated: “Clearly, we need to better understand the potential impact of second-adjacent channel LPFM protection standards on the successful development of an IBOC system.” *Id.* Accordingly, in proposing to permit negotiated interference agreements between FM stations in its *Technical Streamlining NPRM*, the Commission specifically sought comments addressing how its proposal might effect the development and implementation of IBOC digital radio systems. *Technical Streamlining NPRM* at ¶27.

As demonstrated in both the *NPRM* in this proceeding and the *Technical Streamlining NPRM*, before the FCC establishes an LPFM service, the Commission must first gain more knowledge regarding IBOC digital conversion in order to determine the extent to which the proposed new LPFM service is likely to impair the development and implementation of the new digital transmission technology. This is true with respect to all three classes of the proposed LPFM service. Furthermore, due to the FCC's admitted lack of knowledge regarding IBOC systems, the Commission must maintain the second and third-adjacent channel protection requirements in establishing an LPFM service in order to ensure adequate protection for the future development of IBOC digital conversion.

**V. To the Extent the FCC Elects to Adopt an LPFM Service, the Commission Should Implement the Following Measures to Minimize the Harm that the New Service Would Cause to Existing Full-Power Stations.**

**A. The LPFM Service Should Be Limited to a Noncommercial Operation.**

In the event the FCC insists upon establishing an LPFM service, all LPFM stations should be restricted to operating on a noncommercial basis. Restricting the LPFM service in this manner, and eliminating the competitive pressures associated with providing a commercial service, would help ensure that all LPFM stations attempt to fulfill their intended purpose of providing locally-originated, non-entertainment programming designed to serve the needs and interests of their respective local neighborhoods or communities. Limiting the LPFM service to a noncommercial operation also would increase the availability of such stations to educational institutions and non-profit entities.<sup>38</sup>

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<sup>38</sup> In licensing LPFM stations, the Commission should retain the eligibility requirements contained in Section 73.503 of the Commission's rules. *See* 47 CFR §73.503.

As the Commission noted, most LPFM stations will need to generate at least some form of revenue in order to remain operational. However, the need for station revenues does not dictate that LPFM stations must operate on a commercial basis and attempt to generate funds through the sale of advertising. Due to their restricted power and limited coverage areas, it is highly unlikely that LPFM stations will be able to garner any meaningful revenues through the sale of advertising. Nevertheless, because of their noncommercial operation, LPFM stations may be able to obtain limited funding through underwriting provided by certain local businesses and community organizations.<sup>39</sup> Moreover, limiting LPFM stations to a noncommercial operation would help promote localism by encouraging LPFM stations to develop specialized programming that may serve the currently unmet needs and interests of a limited audience group. This specialized programming also might enhance an LPFM station's ability to generate underwriting revenues by making the station more attractive to certain local businesses and organizations whose products, services, and activities are directed towards a narrow segment of the local community.

B. The FCC Must Impose a Mandatory Local Program Origination Requirement.

In light of the Commission's stated purposes in proposing to establish an LPFM service and the significant countervailing public interests that weigh heavily against such a service, the Commission cannot afford to give LPFM licensees the same discretion as full-power stations in determining "what mix of local and non-local programming will best serve" their respective

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<sup>39</sup> Even if the proposed LPFM service were to be limited to a noncommercial operation, the ability of LPFM stations to obtain underwriting funds from local businesses and community organizations still would have an adverse impact upon full-power stations because they both would attempt to garner revenues from the same pool of prospective local advertisers/underwriters. Indeed, in today's broadcast marketplace, there is not a significant distinction between the efforts made by commercial stations to obtain advertising revenues and those by noncommercial stations to obtain funds through underwriting.

community. *See NPRM* at ¶68. In order to ensure that all LPFM stations make every effort to fulfill the FCC's stated objective that they air community-oriented programming that "reflects the needs, interests, circumstances, and perspectives" unique to their community (*id.*), the Commission must impose a minimum local program origination requirement for all LPFM stations (including microradio stations) such that their overall programming must be comprised of no less than 80% local originated programming.

C. The FCC Should Impose Maximum Height Restrictions On All LPFM Stations.

The Commission proposed to permit LP1000 stations to operate with up to 1000 watts at an antenna height of 60 meters above average terrain. The Commission proposed to permit antenna heights greater than 60 meters above average terrain, however, so long as the station makes an appropriate downward adjustment in its ERP such that its predicted 1 mV/m signal contour radius does not exceed 14.2 kilometers. *NPRM* at ¶23, note 35. Similar treatment was proposed for LP100 stations. *Id.* at ¶30, note 44.

In the event the FCC elects to establish an LPFM service, the Commission must adopt maximum antenna height restrictions for each class of LPFM station. In the FM service, it is well established that the greater a station's antenna height, the greater distance the station's signal generally will extend because it will be less affected by intervening terrain. Thus, if an LP1000 station were to operate with an antenna height greater than 60 meters above average terrain and an equivalent reduction in operating power (such that its predicted 1 mV/m signal contour would not exceed 14.2 kilometers), the LPFM station likely could extend its actual (rather than predicted) service and interfering contours well beyond what they would be if the station were operating with 1kw at 60 meters HAAT.



As demonstrated above, LPFM stations are likely to cause significant interference to full-power stations operating in the same area. LP1000 stations would cause even more interference to the signals of full-power FM stations if they were to operate with antenna heights significantly higher than 60 meters (or 30 meters for LP100 stations) above average terrain. Therefore, to the extent all three classes of the proposed LPFM stations are established, the Commission should impose maximum height restrictions of 70 meters HAAT for all LP1000 stations, and 40 meters HAAT for all LP100 and microradio stations.

D. The FCC Should Limit the Amount of Interference that LPFM Stations May Receive and Establish a Minimum Operating Requirement.

In the event the FCC elects to authorize an LPFM service, the Commission should adopt strict guidelines governing the amount of interference that LPFM stations are permitted to receive and establish a minimum operating schedule. As demonstrated above, it is highly unlikely that LPFM stations would be unable to generate sufficient revenues to air local programming that serves the needs and interests of their respective service areas. Moreover, LPFM stations would exacerbate the conditions of an already overly-congested FM band, preclude proposals to introduce new services, and significantly impair the ability of full-power stations to either expand or enhance their existing services. In addition, LPFM stations would cause significant interference to full-power stations both within and outside their protected contour, and would not constitute a satisfactory replacement service for the full-power service which they would destroy. The proposed LPFM service also poses a significant threat to the development and implementation of IBOC digital transmission services. Therefore, in light of the substantial public interest factors which weigh heavily against establishing an LPFM service, the Commission should not authorize any LPFM

station if it is predicted to receive more than a *de minimis* amount of interference, *i.e.*, more than 5% of its predicted service area. Furthermore, the Commission should impose a minimum operating schedule to require all LP100 and microradio stations to operate no less than two-thirds of the total hours between 6:00 a.m. and 6:00 p.m., local time, Monday through Saturday.<sup>40</sup>

- E. The FCC Should Not Treat LP1000 Stations as a Primary Service, LP100 Stations Should Not Be Given a Priority Over FM Translators and Boosters, and Full-Power AM and FM Stations Should Be Permitted to Use FM Translators and Boosters to Enhance Their Existing Service Without Regard to LPFM Stations.

In its *NPRM*, the FCC proposed to treat LP1000 stations as a primary service. *NPRM* at ¶27. The FCC proposed to treat LP100 stations as a secondary service, but suggested that they should receive priority status over FM translators and boosters. *Id.* at ¶¶30, 33.

Assuming, *arguendo*, that the FCC elects to establish an LPFM service, all LPFM stations should operate on a secondary basis. If LP1000 stations were licensed as a primary service, and/or LP100 stations were given priority over FM translators and boosters, the LPFM stations would preclude full-power FM stations from using translators or boosters to enhance their existing service where the service provided by the LPFM stations and translators/boosters is mutually exclusive. Therefore, the FCC's proposal would significantly impair the ability of full-power FM stations to enhance their existing service.

Before establishing a new LPFM service, the FCC first should make every effort to support existing full-power stations, particularly AM stations. Many AM stations have long suffered from a weak signal and poor reception. The ability to use FM translators to provide fill-in service within

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<sup>40</sup> The Commission proposed to require LP1000 stations to maintain the same minimum hours of operation as are required of the lowest class of full-power stations, *i.e.*, generally two-thirds of their authorized hours between 6:00 a.m. and midnight. *NPRM*, at ¶76. In the event the FCC establishes an LP1000 service, this minimum operating requirement should be adopted.

their existing contours would provide AM stations with a critical means of enhancing their service. Moreover, if the Commission were to permit daytime-only AM stations to use FM translators at night, this also would help to aid many primary service stations that are in severe financial distress and might otherwise be forced off the air due to their relatively weak signal and inability to operate at night.<sup>41</sup>

In light of the substantial financial investment and past service to the public provided by AM and full-power FM stations, the licensees of such stations should have the opportunity to utilize FM translators and boosters to enhance their existing service without regard to the proposed LPFM stations. Accordingly, all LPFM stations should operate on a secondary basis and be subject to displacement by full-power FM stations. LPFM stations also should be subject to displacement by FM translators used by any full-power station, including AM stations, to fill in gaps in their existing service areas.

In the event the FCC were to afford LP1000 stations primary status, at the very least, FM translator and booster stations which pre-date the launch of LPFM service should receive grandfathered interference protection from LP1000 stations. Moreover, FM translators and boosters should not be treated on a secondary basis *vis-a-vis* LP100 stations. In the event the Commission elects to treat them in such a manner, all existing translators and boosters should receive grandfathered interference protection from LP100 stations.

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<sup>41</sup> In the *NPRM*, the FCC refused to consider a pending proposal to permit AM stations to use FM translators to provide fill-in service because, according to the Commission, that proposal is not “sufficiently related” to the goals in this proceeding. *NPRM* at ¶3, n. 3 (citing *Public Notice*, DA 98-2527 (released December 10, 1998)). The Commission’s refusal to consider the above proposal will have an adverse effect on the ability of AM stations to improve their existing service through the use of FM translators, and should be reconsidered.

F. The FCC Must Resolve All Mutually Exclusive Commercial LPFM Applications Through a Competitive Bidding Process.

In the event the FCC elects to establish a commercial LPFM service, the Commission's proposal to resolve mutually exclusive applications for commercial LPFM stations through a competitive bidding process (*see NPRM* at ¶104) must be adopted in order to comply with the Budget Act.

Section 309(j)(1) of the Communications Act of 1934, as amended (the "Act") (as amended by Section 3002(a) of the Budget Act), makes abundantly clear that if mutually exclusive applications are filed for "any initial license or construction permit," "the Commission shall grant the license or permit to a qualified applicant through a system of competitive bidding . . . ." 47 U.S.C. §309(j)(1). Moreover, in its *Auction Order* (establishing standards for auctions of broadcast facilities), the Commission stated that, based upon the express language of Section 309(j)(1) of the Act, "auctions are mandatory for *all secondary commercial broadcast services (e.g., LPTV, FM translator and television translator services).*" *Id.* at ¶9 (emphasis added). The Commission also stated that Section 309(j)(1), as amended, no longer restricts the type of spectrum license which may be awarded through the competitive bidding process, or requires an affirmative public interest determination that the use of an auction will serve the statutory objectives. *Id.* The Commission further stated:

Nothing in the statutory language or in the accompanying legislative history indicates that the requirement to use competitive bidding for "any initial license or construction permit" is limited to full-power radio and analog television stations, or that Congress intended such a limitation. Nor are secondary commercial broadcast service licenses exempted from the auction requirement under Section 309(j)(2),

which enumerates the certain types of spectrum licenses that are not subject to competitive bidding. . . . The Conference Report states that “[a]ny mutually exclusive applications for radio or television broadcast licenses received after June 30, 1997, shall be subject to the Commission’s rules regarding competitive bidding, including applications for *secondary broadcast services* such as low power television, television translators, and television booster stations. [footnote omitted]. This list of secondary broadcast service licenses is illustrative rather than exhaustive.

13 FCC Rcd at 15924, ¶10 (emphasis in original). Therefore, if the FCC establishes a commercial LPFM service, there is no statutory basis for excluding the proposed LPFM stations from the general auction requirements of Section 309(j)(1) of the Act.

In adopting auction rules for its proposed LPFM service, the Commission should not adopt any alterations or modifications to its auction procedure that will not be applied in the auction process of other broadcast services. The Commission should do no more than provide mutually exclusive applicants for LPFM facilities with a brief period after the filing of their short-form applications in which to attempt to resolve the mutual exclusivity between their respective applications. *See Auction MO&O* at ¶64.

Furthermore, as stated in the *Auction MO&O*, the Budget Act creates a presumption that reserve prices and minimum opening bids are in the public interest. *Auction MO&O* at ¶51. The Commission also stated that, in connection with its previous auction proceedings, the Wireless Telecommunications Bureau has found that the use of reserve prices and minimum opening bids serves the public interest objectives of Section 309(j) of the Act by promoting competition, disseminating licenses among a variety of applicants, promoting efficient spectrum use, and recovering a portion of the value of the spectrum for the public. *Id.* Thus, because the Commission has elected to use reserve prices and minimum bids in the auction of both full-power and secondary broadcast services, including LPTV stations and FM and television translators, these procedures also

must be employed in auctions for LPFM facilities. The use of these procedures, of course, will further frustrate the Commission's fundamental objectives of providing an opportunity for new entry into broadcasting and enhancing ownership diversity. Indeed, by employing reserve prices and minimum opening bids, existing broadcasters, who typically will be in a more advantageous position to meet these heightened financial requirements than new entrants, will be that much more likely to acquire LPFM authorizations.

G. All LP1000 Stations Should Be Authorized Through An Allotment Process.

In the event the Commission elects to adopt a commercial LPFM service, all LP1000 stations should be authorized through an allotment process. As stated above, the Commission has proposed that LP1000 stations would operate as a primary service, and generally be subject to all of the Part 73 rules applicable to full-power FM stations. *See NPRM* at ¶73. LP1000 stations also would be authorized to operate with substantially more power than the minimum ERP for Class A FM stations, and are likely to cause substantial interference to full-power FM stations both within and outside their protected contours. Therefore, in order to minimize the amount of interference that will be caused to existing full-power stations, the Commission should adopt an allotment procedure whereby interested parties are required to file a petition for rulemaking seeking the allotment of an LPFM channel to a specific community (or portion thereof) before permitting any application to be filed for that facility. The allotment procedure would permit the Commission to consider all mutually exclusive proposals together (including any counterproposals that may be filed), and allot an LPFM channel to the specified community at a location which would cause the least interference to existing stations and otherwise best serve the public interest.

H. In the Event the FCC Elects to Establish a Commercial LPFM Service, the Commission Should Make LPFM Stations Available to Daytime-Only AM Stations Regardless of Its Ownership Rules.

Assuming, *arguendo*, the FCC elects to institute a commercial LPFM service, the Commission should ensure that, regardless of the ownership rules that are ultimately adopted, licensees of daytime-only AM stations have an opportunity to apply for LPFM stations as a means of complimenting their existing daytime service. Providing an opportunity for daytime-only AM licensees to acquire LPFM stations would promote diversity by enabling many struggling daytime-only AM stations to continue to operate as stand-alone entities by enhancing their ability to compete more effectively in their respective markets. It also would promote localism by enhancing their ability to provide local news, public affairs, and other non-entertainment programming that would better serve the needs and interests of their respective service areas.

**VI. Conclusion.**

As demonstrated herein, the Commission's proposal to establish an LPFM service would not serve the public interest. The proposed LPFM service would not meet any of the Commission's primary objectives of providing an increased opportunity for new entry, enhanced ownership diversity, or an increase in local programming. More importantly, the LPFM service, as proposed by the Commission, would cause substantial interference to existing full-power FM stations both within and outside their protected service contours. In addition, an LPFM service would significantly hinder the development of IBOC digital transmission services, and would result in a proliferation of unauthorized broadcast operations.

Nevertheless, assuming, *arguendo*, that the Commission insists upon establishing some form of LPFM service, in order to ensure that LPFM stations at least attempt to fulfill their intended

purpose of airing community-oriented programming designed to serve the needs and interests of their respective local neighborhoods or communities, LPFM stations must be restricted to operating on a noncommercial basis so that they will not be subject to the competitive pressures associated with providing a commercial service, and can focus solely on airing community-oriented programming. The Commission also must impose a local program origination requirement on LPFM stations, so that a minimum of 80% of all LPFM programming is locally-originated, and establish a minimum operating schedule.

Furthermore, in order to minimize the interference that would be caused to existing full-power FM stations, the Commission must maintain the existing second and third-adjacent channel protection requirements. Indeed, Chairman Kennard has repeatedly stated that he does not intend to implement the proposed LPFM service in a manner that would cause interference to existing full-power stations. The Commission must, therefore, take every precaution it can to prevent the interference that the Chairman has said he would not tolerate. In order to further minimize interference to existing stations, the Commission must also impose maximum height restrictions on all LPFM stations and restrict the amount of interference that such stations may receive.

Finally, in the event the Commission elects to authorize a commercial LPFM service, all mutually exclusive applications for commercial LPFM stations must be resolved through a competitive bidding process. Moreover, despite the proposed ownership rules, the Commission cannot impose any ownership restrictions that are more restrictive than those mandated by the 1996 Act. Therefore, the proposed LPFM stations must be made available to existing broadcasters.



Respectfully submitted,

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